



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

**ADVISORY OPINION
2010-06**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the “Department”) on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL INSURERS AUTHORIZED TO TRANSACT LIFE INSURANCE
BUSINESS IN KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER

DATE: AUGUST 13, 2010

RE: RETAINED ASSET ACCOUNTS

The purpose of this bulletin is to set forth the procedures the Department expects to see in place regarding the settlement of life insurance proceeds through the mechanism known by the term “retained asset accounts.” These accounts are designed to be a temporary repository of funds while the beneficiary considers the available options for the receipt of life insurance proceeds.

Kentucky Revised Statute 304.12-230 provides that it is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions:

- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

Kentucky administrative regulations further provide at 806 KAR 12:092 Section 3(4) as follows:

Section 3. Claim Practices.

(4) The insurer shall affirm or deny any liability on claims within a reasonable time and shall offer payment within thirty (30) calendar days of receipt of due proof of loss. If the insurer fails to pay the claim within thirty (30) days of receipt of due proof of loss, and the delay or denial is due to lack of a good faith attempt to settle the claim, the claim bears interest at the rate of twelve (12) percent per annum from the expiration of thirty (30) days from the receipt of due proof of loss. If the delay or denial is without reasonable foundation, the insured shall be reimbursed for reasonable attorney's fees incurred in collecting the claim. If a portion or portions of the claim are in dispute, the insurer shall tender payment for any portion or portions of the claim which are not in dispute within thirty (30) days of receipt of due proof of loss.

While the Department understands that the use of “retained asset accounts” may be preferred by beneficiaries in that the accounts allow time for the beneficiary to determine how life insurance proceeds should be distributed, no insurer shall utilize the accounts to abrogate the claim settlement mandates of KRS 304.12-230 or 806 KAR 12:092. Although the Department has received no specific complaints regarding the use of retained asset accounts for the disposition of life insurance proceeds, recent publicity of the potential limitations and restrictions on the use of these accounts make it necessary for the Department to outline its position on the subject matter.

In market conduct examinations and handling of consumer complaints, the Department expects the following procedures to be in place:

A. Supplemental Contract

If the insurer offers the beneficiary settlement options other than immediate cash payment of the full benefit amount, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights and obligations of both the beneficiary and the insurer with respect to the benefit. The supplemental contract shall outline, in clear and conspicuous language, the terms of the disbursement of the life insurance proceeds. If a retained asset account is chosen as an option, the supplemental contract shall clearly identify any limitations, restrictions, and interest provisions related to the accounts. The failure to clearly outline the terms of the life insurance claim settlement will be considered a violation of KRS 304.12-230.

Proof that the beneficiary “opted in” to a mechanism for the disbursement of life insurance proceeds, other than an immediate cash payment, shall be retained by the insurer in the insurer’s claim records in accordance with 806 KAR 2:092 Section 4 which provides as follows:

Section 4. File and Record Documentation. Each insurer's claim files are subject to examination by the commissioner or the commissioner’s designees. To aid in an examination:

- (1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial

- or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.
- (2) Documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.
 - (3) Each document within the claim file shall be noted as to date received, date processed, or date mailed.
 - (4) For those insurers which do not maintain hard copy files, claim files shall be accessible from a computer terminal available to examiners or micrographics and be capable of duplication to hard copy.

B. Disclosure

When determining whether a claim has been settled in accordance with the unfair claims settlement provisions of Kentucky law at KRS 304.12-230 and 806 KAR 12:092, the Department will consider the following:

(1) The "Checkbook"

Literature produced by the life insurance company describing the settlement options for life insurance proceeds should clearly disclose that payment of the total proceeds is accomplished by delivery of a "checkbook," if that is the case. Any limitations and restrictions on the use of the "checkbook" should be disclosed, including limitations and restrictions on, or special processes required to access the insurance proceeds. Also, the insurer should disclose to the beneficiary that one check can be written to access the entire proceeds, and that the other options are preserved until the entire balance is withdrawn or the balance drops below the insurer's minimum payment requirements.

(2) The Account

The insurer should disclose whether the account into which the life insurance proceeds is to be deposited is a checking or draft account and explain the account's features, including the name of the institution holding the account if not the insurer. The disclosure document should include information about what banking services are provided to the account holder and by whom. It should be clearly stated which services are provided at no charge, and which services involve a fee. Any limitations and restriction on the use of the "checkbook" should be disclosed. The nature and frequency of account statements should be disclosed. The disclosure document should also provide a phone number and address where the beneficiary can obtain additional information and answers to questions.

(3) Tax Implications

The disclosure information should indicate that there may be tax on the interest earned on the account, and the beneficiary should consult his or her tax advisor.

(4) Other Options

Literature describing the settlement options should clearly disclose what other options are available under the policy. Where appropriate, the interest rate being paid under those options should also be disclosed. Any retention by the insurer of interest or other charges for the administration of the account shall be clearly and conspicuously disclosed.

C. Accounting

In accordance with KRS 304.3-240, the funds necessary to cover liabilities held in accounts such as retained asset accounts shall be reported on the annual statement as required by the *Accounting Practices and Procedures Manual* of the National Association of Insurance Commissioners.

If you have questions regarding this Advisory Opinion, please contact the Health and Life Division of the Kentucky Department of Insurance at (502) 564-6088.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 13th day of August, 2010